

Exhibit 2



Rachel Doughty <rdoughty@greenfirelaw.com>

Service List for Water Board Action

1 message

Rachel Doughty <rdoughty@greenfirelaw.com>
To: "Tyler M. Alexander" <Tyler.Alexander@usdoj.gov>
Cc: Jessica San Luis <jsanluis@greenfirelaw.com>

Fri, Mar 21, 2025 at 7:07 PM

Hi Tyler,

Please see attached, memorializing the USFS's addition to the service list for the water board administrative matter. I've also attached our letter to the Board at the subsequent Board hearing. As you can see, the USFS was served throughout the matter.

If you would like to access these documents directly, The hearings docket can be accessed at this website:
<https://ftp.waterboards.ca.gov>

Username: AHO-FTP

Password: ahoftppublicaccess

In the index menu:

Toggle out "Water Rights Enforcement --other" and then "BlueTriton Brands"

Please add the administrative record for the Water Board to the administrative record for the SOFA v. USFS matter, case 5:24-cv-01336-JGB-DTB.

Regards,

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5 attachments

2021-06-04 USFS Service List for Blue Triton Hearing.pdf
53K

2021-06-04 J. Rider (USFS) e-mail to AHO.pdf
379K

2021-08-04 Forest Service revised service list.pdf
45K

2021-08-04 Forest Service email to AHO.pdf
176K



2023-06-26 SOS ltr.pdf

198K

Mullen, Nicole@Waterboards

From: Rider, Joshua - OGC, San Francisco, CA <joshua.rider@usda.gov>
Sent: Friday, June 4, 2021 11:48 AM
To: WB-EXEC-AdminHrgOffice
Subject: Service List for Blue Triton Brands
Attachments: USFS Service List for Blue Triton Hearing.docx

EXTERNAL:

To whom it may concern:

In accord with the AHO's notice of May 21, 2021 concerning a hearing requested by Blue Triton Brands, the United States Department of Agriculture--Forest Service provides the attached updated service list.

All persons may be served electronically through the provided email addresses.

Please contact me if you have any questions.

Respectfully,

Joshua S. Rider

Fair Warning: I plan be out of the office on the following dates in 2021 and will not have access to this email: July 6-23, September 6-24, and other dates to be determined. Please plan accordingly. Your consideration is appreciated.

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📞 415-744-3011 (Voice)
✉️ Joshua.Rider@usda.gov

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Please include the following persons on the official service list for any matter relating to these proceedings:

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diana.craig@usda.gov

Anderson, Skyler@Waterboards

From: Rider, Joshua - OGC, San Francisco, CA <joshua.rider@usda.gov>
Sent: Wednesday, August 4, 2021 2:36 PM
To: WB-EXEC-AdminHrgOffice
Subject: Revised Service list for US Forest Service for Blue Triton Brands
Attachments: Revised USFS Service List for Blue Triton Hearing.docx

EXTERNAL:

To whom it may concern:

Please accept the attached revised service list for the United States Forest Service for use in the matter of the Board's hearing concerning Blue Triton Brands. The Forest Service will not be participating in the hearing as an interested party, but would request service of the submissions by other parties to the Board.

If you have any questions, please reach the undersigned counsel by electronic mail.

Respectfully,

Joshua Rider

Fair Warning: I plan be out of the office on the following dates in 2021 and will not have access to this email: June 10-11; July 6-23; September 3-24; and other dates to be determined. Please plan accordingly. Your consideration is appreciated.

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Robert Taylor
Forest Hydrologist
San Bernardino National Forest
robert.taylor2@usda.gov

You may remove from the service list the following individuals previously identified by the Forest Service for service in this matter:

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Jim Bacon
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Mullen, Nicole@Waterboards

From: Jessica Taylor <jtaylor@greenfirelaw.com>
Sent: Wednesday, August 25, 2021 12:37 PM
To: WB-EXEC-AdminHrgOffice
Cc: Petruzzelli, Kenneth@Waterboards; Prager, John@Waterboards; Robert Donlan; cms@eslawfirm.com; rmaguire@azwaterlaw.com; Murray, Nancee@Wildlife; Miller, Kathleen A.@Wildlife; Meredith Nikkel; sbivins@downeybrand.com; Rachel Doughty; Michael O'Heaney; Laurens H Silver; Ross Ross Middlemiss; Lisa Belenky; Hugh Bialecki; Steve Loe; Amanda Frye; Kristopher Anderson; Jennifer Capitulo; David J Guy; Henry Frye; Jody Isenberg; Jody Isenberg; Mary Ann Dickinson; Joshua S. Rider; Joseph Rechsteiner; robert.taylor2@usda.gov
Subject: BlueTriton Brands, Inc. CDO Hearing - Request to Update Service List

EXTERNAL:

Dear Administrative Hearing Office,

I am writing to request that my email address be added to the service list for the BlueTriton Brands, Inc. CDO Hearing. I am listed as one of the attorneys representing Story of Stuff, which is correct, however, my email address is not included on the current service list. The email address to be added is as follows:
jtaylor@greenfirelaw.com.

Thank you for your assistance.

Jessica Taylor

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Jessica A. Taylor, Esq.
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RACHEL S. DOUGHTY
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June 26, 2023

By U.S. Mail and Electronic Mail

Courtney Tyler
Acting Clerk of the Board State Water Resources Control Board
P. O. Box 100Sacramento, CA 95812
EXEC-BoardClerk@Waterboards.ca.gov

RE: Comments on Notice of Transmittal of Proposed Order Regarding BlueTriton Brands (INV 8217)

Dear Esteemed Members of the Water Board:

These comments are submitted on behalf party The Story of Stuff Project in support of the proposed order.¹ The Project has worked side-by-side with grassroots organizers for nearly a decade, including former Forest Service Biologist Steve Loe, and Amanda Frye—who with great diligence located the historical records so essential to the record in this matter.² The more pieces that emerged to complete the record, the more obvious it became that BlueTriton Brands, Inc., and its predecessors never had a right to any of the resources that they have taken for nearly a century, unjustly denuding public lands and impoverishing downstream public water sources in the process.

Adopt the Proposed Order As Is

We urge you to adopt the proposed order in its entirety and without revision pursuant to your authority under Water Code section 1114, subdivision (c)(2)(A). The Administrative Hearing Office can be given considerable credit for surfacing the truth and laying a strong foundation of support for the proposed order. The hearing was conducted with rigor, diligence, and impartiality. The draft order is supported by a substantial and redundant record. As drafted, the proposed order is imminently defensible and should survive any court challenge, including for preliminary relief, thus safeguarding the headwaters of Strawberry Canyon.

¹ The Project invites you to visit its website: <https://www.storyofstuff.org/>. Additionally, the Project produced a video seven years ago about the diversion now owned and operated by BTB: <https://www.youtube.com/watch?v=Qcus410BwX8>.

² Video regarding the diversion structure and operation in within the San Bernardino National Forest now owed by BlueTriton Brands, Inc.

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But the work is not complete. The Project asks that you also take the additional step of directing staff to initiate a new enforcement action(s) to address: (1) harm to public trust resources, (2) curtailment of diversion of water originating from springs 10, 11, 12, and (3) assessment of penalties against BTB and its predecessors in interest.

Direct Staff to Investigate Action to Protect Strawberry Canyon Trust Resources

Direction to staff to examine and take action as appropriate to prevent further harm to trust resources is needed, particularly with regard to springs 10, 11, and 12, and particularly because the order anticipates diversion apparatus remaining in place. The Hearing Officer explicitly refused to admit evidence supporting a harm to public trust claim as no public trust claim was included in staff's draft order. However, in executing its responsibilities, the Board is charged by the state's constitution and supporting statutory language to prevent the waste or unreasonable use of water, regardless of the basis of right under which the use is claimed.³ At all times and in each of its actions, the Board has the obligation to protect the interests of the public in trust resources, including interests in commerce, fisheries, recreation, and ecology.⁴ Direction to staff to consider the impacts of the unauthorized use by BTB will help to fulfill this mandate.

Direct Staff to Investigate an Enforcement Action to Stop Unauthorized and Unreasonable Diversion of Springs 10, 11, 12

As noted in section 3.8 of the proposed order, the Prosecution Team concluded after all evidence was presented in the hearing that the Water Board has jurisdiction over the water that BTB diverts from 10, 11, and 12.⁵ And because BTB's asserted basis of right to the water derived from 10, 11, and 12 is identical to that for the other springs of Strawberry Canyon, that basis has already been discredited. As a result, the Board should direct staff to take action to curtail that unauthorized diversion from 10, 11, and 12.

In taking action, staff should be directed to consider an unreasonable use allegation in addition to unauthorized use. In exercising its duties, the Board, "shall take all appropriate proceedings or actions before executive, legislative, or judicial agencies to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state."⁶ The Board has plenary authority to investigate, condition permits, and enforce the constitutional requirement for reasonable use of the state's water resources.⁷ The constitutional provisions on reasonable use apply to all sources of water, including groundwater and sources of surface water that might not otherwise come under the State Board's regulatory authority.⁸ BTB admitted at the hearing that it has historically dumped much of the water it takes from Strawberry Canyon,

³ See Cal. Const., art. X, § 2; Wat. Code, § 275; *Imperial Irrigation Dist. v. State Wat. Resources Control Bd.* (1990) 225 Cal.App.3d 548, 557-61.)

⁴ *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419; See generally, *In re Water of Hallett Creek Stream System* (1988) 44 Cal.3d 448, 472 fn. 16.

⁵ See also, Prosecution Team Closing Brief, p. 28 (August 5, 2022); see also, Wat. Code, § 1052(a)(unauthorized diversion of jurisdictional waters is a trespass).

⁶ Wat. Code, § 275.

⁷ *Imperial Irrigation Dist. v. State Board* (1990) 225 Cal. App.3d 548, 566-67.

⁸ *Light v. State Water Resources Control Board* ((2014) 226 Cal.App.4th 14.

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which is not a reasonable use of water.⁹ The Forest Service has identified BTB's diversions as the cause of poor conditions in Strawberry Canyon.¹⁰

Direct Staff to Investigate an Administrative Civil Liability Action

Wat. Code, § 1050, authorizes the State Water Resources Control Board to enforce Wat. Code, div. 2, in furtherance of the policy expressed in Cal. Const., art. X, § 2, and for the benefit of the people of California. Wat. Code, § 1051, grants the board the authority to investigate streams and other surface water sources to determine whether a use or appropriation of water is lawful. Wat. Code, § 1052, subd. (b), authorizes the California Attorney General to bring an action on behalf of the board (or the state) to enjoin use or diversion of water. Section 1052, subd. (c), identifies the daily penalties for violations of § 1052, subd. (a). Section 1052, subd. (d), authorizes the board to impose administrative civil liability in accordance with the procedure set forth in Wat. Code, § 1055. Wat. Code, § 1058.5, permits the board to adopt emergency regulations in response to drought conditions.¹¹

The penalty factors that must be considered in assessing a penalty support a large penalty in this case, and establish the urgency of so doing promptly. Any penalty must be sufficiently large to discourage similar behavior by BTB and others who might put water to unauthorized use—in other words, to the extent possible, the financial gain by the violator must be erased. Failing to seek a penalty is tantamount to condoning similar behavior as a simple cost benefit analysis reveals the financial gain BTB and its predecessors of enjoyed by ignoring the law.

The factors that must be taken into consideration in assessing a penalty under the Water Code are: “all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.”¹² Here BTB and its predecessors have taken nearly all of the water out of Strawberry Canyon, a municipal water source located on public land, for over 100 years. In the face of objection, they have doubled down on a water right myth perpetuated by them, despite their own records showing that they had no right.¹³ They have made hundreds of millions of dollars.¹⁴

⁹ See the Project's Closing Brief, p. 8-9 (August 5, 2022), SOS Exhibit 80.

¹⁰ *Id.*

¹¹ Cal. Water Curtailment Cases, 83 Cal. App. 5th 164, 167, 299 Cal. Rptr. 3d 352 (2022). Given the possibility of fraud in this case, the Attorney General's office might consider an action under Gov. Code section 17200 upon further investigation, allowing for a disgorgement of profit remedy.

¹² Water Code, § 1848.

¹³ See, e.g., the Rowe documents in evidence. Rowe was hired by BTB's predecessor in interest, and his documents were developed under a contract with that predecessor, discussed at length in the Project's Closing Brief, section II.A.

¹⁴ In 2018, Nestle reported bottling 16.8 million gallons of water from Strawberry Canyon. See SOS Exhibit 80. A gallon of Arrowhead Spring Water is selling today at Target for \$2.38. Notably, that same year--2018, Nestle dumped 19.5 million gallons of water taken from the top of Strawberry Canyon at the bottom of its pipeline, depriving the Canyon watershed and public lands of that water. Rowe established that diversion would remove the “pumps”—the willows and other riparian habitat—and that is just what has happened.

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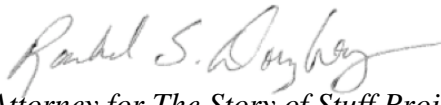
Action Should Not Be Delayed

The Board has the authority to pursue in court civil penalties “[u]pon failure of any person to comply with a cease and desist order issued by the board pursuant to [the water rights enforcement Chapter of the Water Code]” of up to as much as \$10,000/day.¹⁵ This action is against BTB, Therefore, it is critical that the Board act without delay to adopt the proposed order and also to encourage action on the other unauthorized use discussed above *with haste*.

Conclusion

In conclusion, the Project emphatically urges that the proposed order be adopted as is. Additionally, the Project urges that the Board direct staff to act forthwith upon the information gained through the investigation and hearing on the proposed order and take the next steps to ensure that trust resources are protected, unauthorized and unreasonable use of water from Springs 10, 11, and 12 is stopped, and penalties appropriate to the longstanding and egregious abuse of public resources are imposed. Please ensure enforcement of the order to the greatest extent possible.

Regards,


Attorney for The Story of Stuff Project

¹⁵ Wat. Code, § 1845(a).

SERVICE LIST

By Electronic Mail

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